

State's shellfish aquaculture program takes major step forward with new approval process for limited areas of cultivation

DOVER – The Department of Natural Resources and Environmental Control has adopted a process for abbreviated review and approval of shellfish aquaculture leases by DNREC's Division of Water following a comprehensive review conducted by the Division of Fish & Wildlife on a significantly-reduced number of acres than allowed for under state regulation, while also limiting operations in Little Assawoman Bay approved under the process to growing only hard clams.

DNREC Secretary David Small this week approved a Statewide Activity Approval (SAA) for use in considering applications for leasing state subaqueous lands for shellfish aquaculture in Little Assawoman, Rehoboth and Indian River Bays. The SAA will only be applicable to 343 acres rather than the 442 acres that were approved as shellfish aquaculture development areas (SADA) under regulations adopted in 2014. DNREC expects that most aquaculturists will seek SAA approvals due to the abbreviated process allowed, rather than individual permits that will be required for all other areas suitable for aquaculture that are outside of those approved under the SAA.

"Approval of this process addresses concerns we have heard from waterfront property owners around the Inland Bays, and still allows certainty for small business interests who wish to pursue growing oysters and clams in the Inland Bays," Sec. Small said. "DNREC had an obligation to develop a process for implementing the law allowing aquaculture, and this approach

does so in an equitable manner. This is a major step in moving the program forward.”

The portions of the SADA in the Little Assawoman Bay approved under the SAA process were limited to sections farther away from homes and areas potentially used by recreational boaters, sailors, kayakers and paddleboarders. The SADA in Beach Cove off Indian River Bay that had previously been adopted by regulation is not eligible for approval under a SAA. Under today’s action, DNREC is also committed to a future review of the regulations, including the potential permanent removal of some SADA areas, and the requirement for marking the one-acre tracts with white PVC pipe. Both of these provisions are included in the regulation and unable to be addressed by the establishment of a SAA for shellfish aquaculture.

Commercial shellfish aquaculture in the Inland Bays was facilitated by the 147th General Assembly’s unanimous passage, and signing into law by Governor Jack Markell in 2013, of House Bill 160. DNREC’s Division of Fish & Wildlife was charged with adopting regulations for the new program, in consultation with other state and federal agencies, including the U.S. Army Corps of Engineers, about how different aspects of shellfish aquaculture might affect the Inland Bays. DNREC’s Division of Fish & Wildlife sought public opinion via two public meetings, followed by a public hearing and comment period on commercial shellfish aquaculture regulations as required by the Administrative Procedures Act. Concerns about the location of some shellfish aquaculture development areas surfaced after the public process and adoption of the regulations.

As shellfish aquaculture program development continued after regulations were adopted, the Division of Fish & Wildlife proceeded with steps to include less acreage under an abbreviated review and approval process than adopted in SADAs. The reduction was facilitated by Fish & Wildlife seeking required subaqueous lands approval for shellfish aquaculture

through submission of a Statewide Activity Approval application to DNREC's Wetlands & Subaqueous Lands Section. The requested and approved SAA areas include 209 acres in Rehoboth Bay, 91 acres in Indian River Bay (a reduction of 24 acres under the SAA), and 43 acres in Little Assawoman Bay (a reduction of 75 acres under the SAA).

Shellfish aquaculture lease applications will be accepted by the Division of Fish & Wildlife after the U.S. Army Corps of Engineers issues new nationwide permits in spring 2017. The Corps' nationwide permits are issued on a 5-year cycle with the current permits set to expire March 18, 2017. The new nationwide permits are expected to include conditioned approval of shellfish aquaculture. Soon thereafter, the Division of Fish & Wildlife will begin accepting lease applications to award shellfish aquaculture leases through an initial lottery.

The Secretary's Order for use of a Statewide Activity Approval in considering shellfish aquaculture lease applications can be found [on the DNREC website](#). For more information on the shellfish aquaculture SAA, please contact DNREC's Wetlands & Subaqueous Lands Section at (302) 739-9943. For more information on the shellfish aquaculture program, please contact the Fisheries Section at (302) 739-9914.

Vol. 46, No. 424

MEDIA CONTACT: Michael Globetti, DNREC Public Affairs,
302-739-9902